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5  
6 **IN THE SUPREME COURT**  
7 **STATE OF ARIZONA**  
8

9 In the Matter of PETITION TO AMEND  
10 RULES 18.5, 18.6, 22.1, 22.5  
ARIZONA RULES OF CRIMINAL  
11 PROCEDURE and RULES 39(d), 47(b),  
12 51(a) ARIZONA RULES OF CIVIL  
PROCEDURE  
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Supreme Court No. R-08-0002

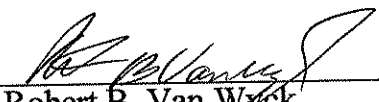
**Comments of the State Bar of Arizona  
Regarding Petition to Amend Various  
Rules of Procedure Relating to Jurors**

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15 The State Bar of Arizona supports the petitioner's proposed amendments to certain  
16 provisions of the Arizona Rules of Civil Procedure and the Arizona Rules of Criminal  
17 Procedure pertaining to jurors. The proposed amendments have long been part of the  
18 Arizona Code of Judicial Administration and reflect current practice. Updating the  
19 Arizona's procedural rules to incorporate these provisions would ensure that the rules  
20 accurately reflect the procedures that the Arizona courts now follow.

21 The State Bar, however, proposes one minor modification to the petitioner's  
22 proposed rule amendments: the reference to "judge" in the proposed amendments should  
23 be changed to "court," which is the term used throughout the unamended portions of these  
24 rules. Using both "court" and "judge" in the same rule sections would be confusing, and  
25 might lead to a mistaken inference that a distinction is being made between the two terms.  
26 Using the term "court" throughout these rules would avoid such a misunderstanding from

1 arising. Attached in Exhibit A is a revised version of the petitioner's proposed rule  
2 amendments that identifies where the change would need to be made.

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4 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of April 2008.

5   
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7 Chief Bar Counsel  
8 STATE BAR OF ARIZONA  
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9 Electronic copy filed with the  
10 Clerk of the Supreme Court of Arizona  
this 1<sup>st</sup> day of April 2008.

11 By: Kathleen A. Lundgren  
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# **EXHIBIT A**

## ***State Bar's Suggested Modifications to Petitioner's Proposed Amendments***

- Petitioner's proposed additions shown by underscoring (e.g., stored) and deletions shown by strike-through (e.g., ~~stored~~)
- The State Bar's proposed additions are shown in italic (e.g., *stored*) and deletions are shown by strike-through of petitioner's underscored additions (e.g., ~~stored~~)

### **Rule 18.5. Procedure for Selecting a Jury**

**d. Voir Dire Examination.** ~~The court shall~~ The judge court shall control the voir dire examination and shall conduct a thorough oral examination of prospective jurors. In courts of record, voir dire shall be conducted on the record. Upon the request of any party, the court shall permit that party a reasonable time to conduct a further oral examination of the prospective jurors. The court may impose reasonable limitations with respect to questions allowed during a party's examination of the prospective jurors, giving due regard to the purpose of such examination. In addition, the court may terminate or limit voir dire on grounds of abuse. Nothing in this Rule shall preclude the use of written questionnaires to be completed by the prospective jurors, in addition to oral examination.

**e. Scope of Examination.** The judge court shall ensure the privacy of prospective jurors is reasonably protected. The examination of prospective jurors shall be limited to inquiries directed to bases for challenge for cause or to information to enable the parties to exercise intelligently their peremptory challenges.

\* \* \*

### **Rule 18.6. Preparation of jurors**

\* \* \*

**c. Preliminary Instructions.** Immediately after the jury is sworn, the court shall instruct the jury concerning its duties, its conduct, the order of proceedings, the procedure for submitting written questions of witnesses or of the court as set forth in Rule 18.6(e), and the elementary legal principles that will govern the proceeding. The instructions shall be provided in a manner

1 that makes them as readily understandable as possible by individuals  
2 unfamiliar with the legal system.

3 **d. Note Taking; Access to Juror Notes and Notebooks.** The court shall  
4 instruct the jurors that they may take notes regarding the evidence presented.  
5 The court shall provide materials suitable for this purpose. In its discretion,  
6 the court may authorize documents and exhibits to be included in notebooks  
7 for use by jurors during trial to aid them in performing their duties. Jurors  
8 shall have access to their notes and notebooks during recesses and  
9 deliberations. After the jury has rendered its verdict, the notes shall be  
10 collected by the bailiff or clerk who shall destroy them promptly. In a capital  
11 case, the jurors shall have access to their notes from the trial and all phases of  
12 the sentencing proceedings until the jury renders a penalty verdict or is  
13 dismissed.

14 **e. Juror Questions.** Jurors shall be instructed that they are permitted to  
15 submit to the court written questions directed to witnesses or to the court; and  
16 that opportunity will be given to counsel to object to such questions out of the  
17 presence of the jury. Notwithstanding the foregoing, for good cause the court  
18 may prohibit or limit the submission of questions to witnesses.

19 **f. Additional Communications.** The judge court shall provide  
20 additional instructions to the jury as necessary during the course of the trial.  
21 All communications between the judge court and members of the jury panel  
22 shall be in writing or on the record.

23 **Rule 22.1. Retirement of Jurors**

24 **a. Retirement.** Prior to the commencement of deliberations, the judge  
25 court shall instruct the jury on the law, the appropriate procedures to be  
26 followed during deliberations, and the appropriate method of reporting the

1 results of its deliberations. Such instructions shall be recorded or reduced to  
2 writing and made available to the jurors during deliberations. After  
3 ~~instructing the jury, the~~ The court shall appoint or instruct the jurors to elect a  
4 foreman. The jurors shall then retire in the custody of a court officer and  
5 consider their verdict.

6 **b. Permitting the Jury to Disperse.** The court may in its discretion  
7 permit the jurors to disperse after their deliberations have commenced,  
8 instructing them when to reassemble and giving the admonitions of Rule 19.4

9 **c. Length of Jury Deliberations.** The court shall not require a jury to  
10 deliberate after normal work hours unless the judge court, after consultation  
11 with the jury and the parties, determines that evening or weekend deliberations  
12 are necessary in the interest of justice and will not impose an undue hardship  
13 upon the jurors.

14 **Rule 22.5. Discharge**

15 The court shall discharge jurors when:

- 16 a. Their verdict has been recorded as set forth in Rule 23;  
17 b. Upon expiration of such time as the court deems proper, it appears that  
18 there is no reasonable probability that the jurors can agree upon a  
19 verdict; or  
20 c. A necessity exists for their discharge

21 When dismissing a jury at the conclusion of the case, the judge court shall advise  
22 the jurors that they are discharged from service and, if appropriate, release them  
23 from their duty of confidentiality and explain their rights regarding inquiries from  
24 counsel, the media, or any person.

Arizona Rules of Civil Procedure

**Rule 39(d). Verdict, Deliberations and Conduct of Jury; Sealed Verdict; Access to Juror Notes and Notebooks**

1. Prior to commencement of deliberations, the judge court shall instruct the jury on the law, the appropriate procedures to be followed during deliberations, and the appropriate method of reporting the results of its deliberations. Such instructions shall be recorded or reduced to writing and made available to the jurors during deliberations.

~~2.1.~~ When the jurors retire to deliberate, they shall be kept together in some convenient place in the charge of a proper officer. The court in its discretion may permit jurors to separate while not deliberating, or, on motion of any party or the judge court, may require them to be sequestered in the charge of a proper officer whenever they leave the courtroom or place of deliberation. The court shall admonish ~~them~~ the jury not to converse among themselves or with anyone else on any subject connected with the trial while not deliberating, or to permit themselves to be exposed to any accounts of the proceeding, or to view the place or places where the events involved in the action occurred, until they have completed their deliberations.

3. The court shall not require a jury to deliberate after normal work hours unless the judge court, after consultation with the jury and the parties, determines that evening or weekend deliberations are necessary in the interest of justice and will not impose an undue hardship upon the jurors.

~~4.3.~~ The court may direct the jury to return a sealed verdict at such time as the court directs.

~~5.4.~~ Jurors shall have access to their notes and notebooks during recesses, discussions and deliberations.

1        6. When dismissing a jury at the conclusion of the case, the judge court  
2        shall advise the jurors that they are discharged from service and, if  
3        appropriate, release them from their duty of confidentiality and explain their  
4        rights regarding inquiries from counsel, the media, or any person.

5        **Rule 47(b). Voir Dire Oath; Examination of Jurors; Brief Opening Statements**

6        1. Prior to examination of jurors with respect to their qualifications, an  
7        oath or examination shall be administered in substance as follows: “You do  
8        solemnly swear (or affirm) that you will well and truly answer all questions  
9        touching your qualifications to serve as a trial juror in the cause now on trial,  
10       so help you God.” If a juror affirms, the cause “so help you God” shall be  
11       omitted.

12       2. Upon request and with the court’s consent, the parties may present brief  
13       opening statements to the entire jury panel, prior to voir dire. The court may  
14       require counsel to present such opening statements.

15       3.2. The court shall The judge court shall control voir dire and conduct a  
16       thorough oral examination of prospective jurors. Upon the request of any  
17       party, the court shall permit that party a reasonable time to conduct a further  
18       oral examination of the prospective jurors. In courts of record, voir dire shall  
19       be conducted on the record unless waived by the parties on the record. The  
20       court may impose reasonable limitations with respect to questions allowed  
21       during the party’s examination of the prospective jurors, ~~giving due regard to~~  
22       ~~the purpose of such examination.~~ The judge court shall ensure the privacy of  
23       prospective jurors is reasonably protected. ~~In addition, the~~ The court may  
24       terminate or limit voir dire on grounds of abuse. Nothing in this Rule shall  
25       preclude the use of written questionnaires to be completed by the prospective  
26       jurors, in addition to oral examination. The judge court may permit written



1 questions to be submitted following review and approval by the court. The  
2 parties may, with the court's consent, present brief opening statements to the  
3 entire jury panel, prior to voir dire. On its own motion the court may require  
4 counsel to do so. Following such statements, if any, the court shall conduct a  
5 thorough examination of prospective jurors.

6 **Rule 51(a). Instructions to Jury; Objection**

7 Immediately after the jury is sworn, the court shall instruct the jury concerning  
8 its duties, its conduct, the order of proceedings, the procedure for submitting  
9 written questions of witnesses or of the court as set forth in Rule 39(b)(10),  
10 the procedure for note-taking, the nature of evidence and its evaluation, any  
11 issues to be addressed, and the elementary legal principles that will govern the  
12 proceeding. The instructions shall be provided in a manner that makes them  
13 as readily understandable as possible by individuals unfamiliar with the legal  
14 system. Prior to the commencement of a jury trial or at such other time during  
15 the trial as the court reasonably directs, any party may file written requests  
16 that the court instruct the jury on the law as set forth in the requests. Counsel  
17 shall be deemed to have waived request for other instructions except those  
18 which could not reasonably have been anticipated prior to trial. The court  
19 shall inform counsel of its proposed action upon the requests prior to their  
20 arguments to the jury. The court, as its election, may instruct the jury before  
21 or after argument, or both. No party may assign as error the giving or the  
22 failure to give an instruction unless that party objects thereto before the jury  
23 retires to consider its verdict, stating distinctly the matter objected to and the  
24 grounds of the objection. Opportunity shall be given to make the objection  
25 out of hearing of the jury. All communications between the judge *court* and  
26 members of the jury panel shall be in writing or on the record.